

October 17, 2011

Via Electronic Submission

Mr. Timothy A. Frazier
Designated Federal Officer
Blue Ribbon Commission on America's Nuclear Future
U.S. Department of Energy
1000 Independence Ave., SW
Washington, DC 20585

Re: Conservation Law Foundation's Comments on the Blue Ribbon Commission on America's Nuclear Future's Draft Report to the Secretary of Energy

Dear Mr. Frazier:

The Conservation Law Foundation ("CLF") offers these comments on the July 2011 draft report of the Blue Ribbon Commission on America's Nuclear Future (BRC). These written comments supplement the presentation made by CLF during the October 12, 2012, BRC Boston meeting. These comments specifically focus on the consent-based siting recommendations of the BRC.

Background

Conservation Law Foundation is a non-profit, member supported, New England-based environmental advocacy organization. Since 1966, CLF has worked on a wide range of legal, energy and environmental matters, including permitting and litigation regarding commercial nuclear facilities in New England. The organization's focus is to solve environmental problems to protect the people, natural resources and communities of New England.

Long term solution needed and should be part of licensing

The United States needs a long-term solution to manage the waste that our energy system produces. This includes everything from managing and regulating carbon dioxide emissions from burning fossil fuels to finding a way to deal with spent fuel from nuclear facilities. One of the primary problems in our system of energy production from nuclear sources is the ease of putting off finding a solution to the needed long-term storage of spent nuclear fuel. A significant impediment to achieving a long-term solution is that this is not perceived as an immediate or pressing problem. The lack of a long-term solution has not affected licensing or the economics of commercial operation of the nation's nuclear fleet. Overall, it is simply too easy to put off finding a solution. Going forward, a solution to the long term storage needs for the nation's nuclear fleet should be part of the licensing and re-licensing process.

Effective stakeholder involvement

The success in achieving a better path forward for long-term storage requires effective involvement from a diverse range of stakeholders. Any consent-based process to solve the transportation, storage, and disposal of nuclear waste needs to do far more than simply provide an opportunity for comments and a response from decision-makers. Any process will fail if decision-makers can ignore comments by those affected by the decisions.

Those involved must have the technical expertise and financial and political means to participate effectively in the process. Input from affected interests, including state and tribal government, citizens, local communities and environmental and health interests must matter.

Tools for effective participation

Tools for effective participation should be available to participants early in the process. This can include: 1) providing funding for citizen and public interest involvement; 2) providing funding for independent technical expertise to allow effective participation; and 3) leveling the playing field for interested stakeholders. Some examples of where these tools have been used include: 1) licensing proceedings before the Federal Energy Regulatory Commission (FERC) where the licensee has funded independent technical experts for participants; 2) national transmission planning efforts currently ongoing that provide limited funding for a range of interests to participate and access needed expertise; and 3) intervenor funding or independent public advocates which are frequently used in state utility proceedings.

Expand decision-making authority

Effective management of the back end of the nuclear fuel cycle depends on expanded decision-making authority. The current process is too narrow. The decision-making is too centralized in a narrow section of the federal government. It operates out of public view, cuts out affected interests, and breeds distrust in the outcome.

The means to expand decision-making include:

1) Eliminating exemptions from environmental laws.

The Atomic Energy Act (AEA) should be amended to give states and other agencies their traditional regulatory roles for environmental and health protection under federal environmental laws. Since 1954, regulation of all nuclear activities has been under the exclusive purview of one federal agency under the Atomic Energy Act. As a result, most environmental laws specifically exclude “source, special nuclear and byproduct material” from regulation by the Environmental Protection Agency or states. Eliminating these exemptions is a crucial step toward a more open and comprehensive decision-making process.

2) *Narrow the scope of what is preempted by federal law.*

The scope of matters preempted by federal law regarding nuclear facilities should be narrowed. State, tribal, and local governments should be allowed to retain their traditional authority to regulate and manage local impacts and effects. A system, such as the current one, which cuts these important interests out of the process, is untenable.

Equity and Fairness

Equity must be considered in decision-making regarding nuclear waste. Equity should balance the benefits and burdens of decisions. Those bearing the burdens of nuclear fuel disposal should be fairly compensated by those who benefit. Equity is an issue in all energy system decisions and should not be viewed in isolation and only as to location decisions. Effective consideration of equities would account for burdens and benefits of the entire energy system. For example, acid rain and air pollution from coal burning in the Midwest currently burdens the Northeast.

If you have questions, please feel free to contact me. Thank you for considering our views on these important matters.

Sincerely,



Sandra Levine, Senior Attorney
Conservation Law Foundation Vermont